STATE OF MICHIGAN

COURT OF APPEALS

LOPATIN MILLER, PC,

Plaintiff/Counter-Defendant-Appellee/Cross-Appellant,

v

MAURICE HERSKOVIC,

Defendant/Counter-Plaintiff-Appellant/Cross-Appellee.

UNPUBLISHED
December 5, 2006

No. 263250
Oakland Circuit Court
LC No. 2003-047326-CK

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Defendant Maurice Herskovic appeals as of right the trial court's order granting plaintiff Lopatin Miller's motion for summary disposition pursuant to MCR 2.116(C)(10) and denying defendant's cross-motion for summary disposition under MCR 2.116(I)(2). Defendant also appeals as of right the trial court's decision to enter plaintiff's proposed joint pretrial order. Plaintiff appeals as of right the trial court's refusal to award plaintiff precomplaint interest on its judgment. We affirm the trial court's order denying defendant's cross-motion for summary disposition and its entry of the joint pretrial order. We also affirm the trial court's refusal to award plaintiff precomplaint interest. However, we reverse the trial court's order granting plaintiff's motion for summary disposition,[1] because we believe that a question of fact exists regarding whether plaintiff misrepresented to defendant the nature and purpose of a life insurance policy that it purchased.

I. Facts

Plaintiff Lopatin Miller, P.C., was a law firm in the metropolitan Detroit area.[2] It was incorporated in 1968. The principal shareholders, Albert Lopatin and Sheldon L. Miller, were

[1] Except as to defendant's unpled claim of damages for mental distress and anguish, for the reasons set forth *infra*.

[2] We refer to Lopatin Miller, P.C., interchangeably as "plaintiff" and as "the firm."

well-known attorneys in southeastern Michigan.[3] Defendant Maurice Herskovic practiced law with the firm for several years. Although he was identified as a "partner" in the firm, he remained a firm employee and never owned stock.

Apparently, defendant and Miller had a strained relationship. Defendant often discussed employment and personnel issues solely with Lopatin. In 1997, after learning that Lopatin had sold his interest in the firm to Miller, giving Miller a controlling interest, defendant and Lopatin discussed defendant's concerns regarding his future with the firm. According to defendant, Lopatin promised that he would receive ten percent of firm profits as compensation. Lopatin also told defendant that the firm had recently purchased an insurance policy on Miller's life in order to protect defendant's standing and interest in the firm after Miller's death. Lopatin explained that the firm would use the policy proceeds to purchase Miller's interest in the firm from his estate after his death. After the purchase, defendant and another partner would control the firm. Defendant continued his employment with the firm in reliance on these representations.

Defendant typically borrowed money at the end of each calendar year to pay his taxes, repaying it within the following month. On December 31, 2000, defendant borrowed between $130,000 and $135,000 from the firm, requesting the loan from the firm's accountant, Gerald Kustra. Defendant and Kustra did not discuss when he would pay back the loan, if the loan was payable on demand, or if interest would accrue. By the end of 2001, defendant had repaid all but $55,000 of the loan. At this time, defendant learned that the policy on Miller's life was designed to benefit the Sheldon L. Miller Irrevocable Trust [Miller Trust] and not to protect his interest and standing in the firm.[4] As a result, defendant decided to leave the firm, and he left to form another firm in the summer of 2002.

II. MCR 2.116(C)(10) Summary Disposition

Defendant argues that the trial court erred when it granted plaintiff's MCR 2.116(C)(10) motion for summary disposition dismissing his claims that the firm misrepresented the nature and purpose of the life insurance policy and denied his cross-motion for summary disposition on these claims. Because we find that a question of fact exists, we agree that the trial court erred when it granted plaintiff's motion for summary disposition, although we hold that the trial court did not err when it denied defendant's cross-motion for summary disposition.

We review de novo the trial court's grant of summary disposition pursuant to MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "The court may not make factual findings or weigh credibility in deciding a motion for summary disposition." *Manning v Hazel*

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[3] Lopatin left the firm in 2003 and died in 2004. Miller renamed the firm "Sheldon L. Miller & Associates, P.C." He remains its principal shareholder.

[4] Miller's children were the trustees of the Miller Trust.

Park, 202 Mich App 685, 689; 509 NW2d 874 (1993). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

A. Lopatin's Authority to Make Representations on Plaintiff's Behalf

Defendant argues that Lopatin and Miller, acting as agents of plaintiff, misrepresented the nature and purpose of the insurance policy the firm purchased on Miller's life. Because a corporation may only act through its officers and agents, an agency relationship exists between a corporation and its officers. *Bruun v Cook*, 280 Mich 484, 495-496; 273 NW 774 (1937). The corporation is the principal and "is responsible for the acts of its agents done within the scope of the agent's authority." *Dick Loehr's Inc v Secretary of State*, 180 Mich App 165, 168; 446 NW2d 624 (1989). The actions of an agent bind a principal when the agent acts with either actual or apparent authority. *Meretta v Peach*, 195 Mich App 695, 698; 491 NW2d 278 (1992).

Plaintiff does not dispute that Miller had the authority to act on its behalf at all times relevant to this appeal. However, it asserts that Lopatin was not a controlling shareholder at the time he made the alleged misrepresentations and, therefore, could not bind the firm. Yet it is immaterial whether an agent of a corporation is a stockholder or not. *Fox v Spring Lake Iron Co*, 89 Mich 387, 399; 50 NW 872 (1891). Therefore, Lopatin could act on behalf of the firm, regardless of his status as a nonstockholder, if he was an agent of the firm when he made the alleged misrepresentations.

Questions "relating to the existence and scope of an agency relationship" are ones of fact. *Hertz Corp v Volvo Truck Corp*, 210 Mich App 243, 246; 533 NW2d 15 (1995). "Where there is a disputed question of agency, any testimony, either direct or inferential, tending to establish agency creates a question of fact for the jury to determine." *Meretta*, *supra* at 697. However, we find that a question of fact exists regarding whether Lopatin had actual or apparent authority to make representations on behalf of the firm when he discussed the nature and purpose of the life insurance policy with defendant.

1. Actual Authority

First, we consider whether Lopatin had actual authority to act on plaintiff's behalf. "Actual authority may be express or implied." *Meretta*, *supra* at 698. Express authority is "[a]uthority given to the agent by explicit agreement, either orally or in writing." Black's Law Dictionary (8th ed). Defendant failed to present evidence indicating that the corporation gave Lopatin authority (either personally or in his apparent role as president of the firm) to make representations to defendant regarding the nature and purpose of the life insurance policy.[5]

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[5] Defendant argues that the firm's bylaws gave Lopatin express authority to make the contested representations. The bylaws state:

> The President shall be the chief executive officer of the Company, and in the recess of the Board of Directors shall have the general control and management of its business and affairs, subject, however, to the right of the Board

(continued…)

Accordingly, he failed to establish that a question of material fact existed regarding whether Lopatin had express authority to act on the firm's behalf.

However, a question of fact exists regarding whether Lopatin had implied authority to act on the firm's behalf. Implied authority is "[a]uthority intentionally given by the principal to the agent as a result of the principal's conduct, such as the principal's earlier acquiescence to the agent's actions." Black's Law Dictionary. It is authority that an agent believes he possesses. *Meretta*, *supra* at 698. "An agent has implied authority from his principal to do business in the principal's behalf in accordance with the general custom, usage and procedures in that business. However, the principal must have notice that the customs, usages and procedures exist." *Id.* (citations omitted). "After the agency relationship and the extent of the agent's authority have been shown, the principal has the burden of proving that the agent's authority was limited." *Id.*

The president is an officer (and, hence, an agent) of a corporation. MCL 450.1531(1). As a corporate officer, the president "has such authority and shall perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board not inconsistent with the bylaws." MCL 450.1531(4).

> There is no presumption that the corporation president has any particular power to act on behalf of the corporation. *Vogt v General Necessities Corp*, 262 Mich 409; 247 NW2d 707 (1933), *Wray v Tilden Saw Co*, 198 Mich 461; 164 NW 545 (1917). The power or responsibility of a corporate officer can be established either by proof of express authorization from the board of directors, *W F Sheetz & Co v Commonwealth Commercial State Bank*, 282 Mich 96; 275 NW 781 (1937), or by circumstantial evidence as to the manner in which the business has operated in the past. See *Shavalier v Grand Rapids Bark & Lumber Co*, 128 Mich 230; 87 NW 212 (1901), *In re Seymour*, 83 Mich 496; 47 NW 321 (1890). [*People v Jasman*, 92 Mich App 81, 86; 284 NW2d 496 (1979).]

First, a question of fact exists regarding whether Lopatin was firm president when he discussed the life insurance policy with defendant in 1997. Miller maintained that Lopatin signed over all his shares in the firm to him in 1995 or 1996. Miller also claimed that firm employees knew that he, and not Lopatin, was president. Further, Karen Jamieson, the secretary for both Lopatin and Miller, believed that Miller took charge of the firm as early as 1992. Lopatin agreed that, in 1996, he sold his stock to Miller and relinquished his title as president.

(…continued)

> of Directors to delegate any specific power except such as may be by statute exclusively conferred upon the President, to any other officer or officers of the Company. He shall preside at all meetings of the Directors and all meetings of the shareholders, unless otherwise determined by a majority of all the shares of the capital stock issued and outstanding, present in person or by proxy.

As president, Lopatin was given "general control and management" of the firm's business and affairs. However, the bylaws do not indicate that Lopatin had the authority to make specific representations regarding employee compensation or the life insurance policy. Hence, the bylaws do not constitute an "explicit agreement" giving Lopatin the authority to make representations regarding the life insurance policy.

However, when the firm bought the policy, Lopatin also signed a split-dollar insurance agreement on behalf of the firm, listing himself as president.[6] Later in his deposition, Lopatin contradicted his earlier statement that he was not president of the firm after 1996, acknowledging that, when he signed the policy in April 1997, he was authorized to sign on behalf of the firm in his capacity as president. Further, Miller acknowledged that, as majority shareholder, he had the authority to remove Lopatin from his position as firm president, but also admitted that he never actively told Lopatin that he was no longer president and that both he and Lopatin signed documents as president. Miller acknowledged that Lopatin was listed as president on corporate documents filed with the Michigan Department of Consumer and Industry Services. Lopatin signed these documents, listing himself as president, until 2002. Miller explained that, after Lopatin sold his shares in the firm, he remained its "figurative" president, and defendant and Kustra believed that Lopatin was president until 2001 or 2002. Based on this evidence, a reasonable fact-finder could conclude that Lopatin was president of the firm in 1997.

Second, a question of fact exists regarding whether Lopatin had the authority as president to make representations to defendant regarding the nature and purpose of the life insurance policy. "[A] corporation is liable for the fraudulent conduct of its president where the conduct was within the scope of his authority." *People v American Medical Ctrs of Michigan, Ltd*, 118 Mich App 135, 155; 324 NW2d 782 (1982). The nature and extent of the agent's authority and whether the act or contract in controversy was within the scope of his authority are questions of fact. *Renda v Int'l Union, UAW*, 366 Mich 58, 95; 114 NW2d 343 (1962), quoting 3 CJS, Agency, § 330, p 328.

A reasonable factfinder could conclude that Lopatin had general authority to address personnel and management issues on the firm's behalf. The firm's bylaws give the president "general control and management of its business and affairs" and the authority to sign contracts on its behalf. Also, Lopatin addressed a variety of personnel and management issues with firm employees both before and after he sold his shares to Miller. For example, Lopatin often made decisions regarding firm compensation and bonuses before the transfer of shares to Miller, and even after the transfer, Miller received Lopatin's input before distributing compensation and bonuses. Furthermore, Miller often had Lopatin address personnel issues with employees who did not like to deal with Miller directly. In late 2001, years after Lopatin made the alleged misrepresentations regarding the life insurance policy, Lopatin and Miller agreed that Lopatin would inform firm employees of their decision to temporarily cease paying salaries to partners and, later, to reduce partners' salaries by half.

Furthermore, a reasonable fact-finder could conclude that Lopatin's authority to address personnel and firm management issues included the authority to address issues concerning the firm's purchase of the life insurance policy. As discussed *supra*, Lopatin often discussed compensation and personnel issues with employees on behalf of the firm, and the insurance agreement indicated that the policy was intended to be a form of compensation for Miller. Also,

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[6] This split-dollar insurance agreement specified that the firm would pay the premiums on Miller's life insurance policy and that the Miller Trust would own the policy.

Lopatin, acting as president of the firm, signed the split dollar insurance agreement. In addition, he mentioned the life insurance policy to defendant in the context of a discussion regarding defendant's future with the firm after Miller became the majority shareholder. A reasonable fact-finder could conclude that Lopatin's representations to defendant regarding the life insurance policy fell within his general authority to address personnel and firm management issues. Accordingly, a question of fact exists regarding whether Lopatin had implied actual authority to make representations to defendant on the firm's behalf regarding the nature and purpose of the life insurance policy.

2. Apparent Authority

Next, we consider whether Lopatin had apparent authority to make representations regarding the life insurance policy on behalf of the firm. "Apparent authority" is "[a]uthority that a third party reasonably believes an agent has, based on the third party's dealings with the principal, even though the principal did not confer or intend to confer the authority. Apparent authority can be created by law even when no actual authority has been conferred." Black's Law Dictionary. Apparent authority arises "when acts and appearances lead a third person reasonably to believe than an agency relationship exists." *Meretta*, *supra* at 698-699. "Apparent authority must be traceable to the principal and cannot be established by the acts and conduct of the agent." *Id.* at 699. A court must examine the surrounding facts and circumstances to determine if an agent possesses apparent authority to perform a particular act. *Id.*

A reasonable fact-finder could conclude that Miller, an undisputed firm agent, acted in a manner that would permit defendant to believe that Lopatin was an agent of the firm when he made the contested representations regarding the life insurance policy. Defendant was aware that Lopatin had sold his shares to Miller in 1996, but he thought that Lopatin remained president of the firm until 2002. As discussed *supra*, Miller was aware that Lopatin continued to sign documents and refer to himself as president. Miller also admitted that a variety of corporate documents listed Lopatin as president even after the stock transfer occurred. Again, although Miller claimed that the firm employees knew that he was president, he also admitted that, although he had the authority to formally remove Lopatin from his position as president of the firm after the stock transfer occurred, he chose not to do so.

Further, defendant maintained that Miller had Lopatin address personnel issues with employees who did not like to deal with Miller directly. Miller admitted that, even after selling his shares, Lopatin continued to come to the office when he was in town, interview and sign up clients, and come to firm meetings. Miller also admitted that Lopatin continued to talk with firm employees regarding employment concerns. According to defendant, Miller never told him or other employees that they should come to him with employment concerns instead of addressing these concerns with Lopatin. Defendant presented sufficient evidence to establish a question of fact regarding whether Miller treated Lopatin in a manner that would permit defendant to reasonably believe that Lopatin was still president of the firm and was authorized to make representations on its behalf and, therefore, whether Lopatin had apparent authority to make the representations in question.

B. Theories of Misrepresentation

Because we conclude that a reasonable fact-finder could determine that Lopatin had the authority to make representations on behalf of the firm, we next consider whether Lopatin, acting on the firm's behalf, misrepresented the nature and purpose of the life insurance policy to defendant. Defendant asserts that Lopatin's statements constitute actionable misrepresentations under four theories, namely, affirmative misrepresentation, innocent misrepresentation, negligent misrepresentation, and silent fraud. We conclude that defendant presented sufficient evidence to permit a reasonable fact-finder to conclude that Lopatin made affirmative misrepresentations, innocent misrepresentations, or negligent misrepresentations regarding the nature and purpose of the life insurance policy. We conclude that defendant presented insufficient evidence to establish a cause of action for silent fraud.

1. Affirmative Misrepresentation

Defendant first claims that Lopatin's statements constitute an affirmative misrepresentation of the nature and purpose of the policy. Defendant's "affirmative misrepresentation" claim is one of common-law fraud. *M & D, Inc v McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998). A defendant has a valid cause of action for common-law fraud if he establishes that (1) the plaintiff made a material representation, (2) the representation was false, (3) when the plaintiff made the representation, he knew that it was false or made it recklessly, without knowledge of its truth as a positive assertion, (4) the plaintiff made the representation with the intention that the defendant would act on it, (5) the defendant acted in reliance on it, and (6) the defendant suffered damages. *Id.* We conclude that defendant presented sufficient evidence to establish a question of fact regarding each element of a claim for affirmative misrepresentation and, hence, whether Lopatin affirmatively misrepresented the nature and purpose of the life insurance policy.

a. Material Representation

In 1997, Lopatin told defendant that the firm had purchased the life insurance policy to protect his standing and interest in the firm after Miller's death. Lopatin explained that the firm would use the policy proceeds to purchase Miller's interest in the firm from his estate, and defendant and another partner would then control the firm. Based on this evidence, a reasonable fact-finder could conclude that Lopatin's statements constituted material representations regarding the nature and purpose of the policy.[7]

b. False Representation

[7] Plaintiff argues that defendant provides no documentary evidence to support his assertions that Lopatin made the contested representation and that evidence of oral statements by Lopatin is insufficient to establish that he made material representations regarding the policy. However, plaintiff provides no authority in support of its assertion that evidence of oral statements is insufficient to establish a material representation and, consequently, it abandons this claim. *Moses, Inc v SEMCOG*, 270 Mich App 401, 417; 716 NW2d 278 (2006).

Lopatin's representations regarding the nature and purpose of the life insurance policy contradict the purpose of the policy noted in the split-dollar insurance agreement. This agreement indicated that the firm agreed to pay the premiums on Miller's life insurance policy as compensation for Miller's continued employment with the firm and that the Miller Trust was the designated owner and beneficiary.[8] Accordingly, if a reasonable fact-finder concludes that Lopatin made the disputed representations regarding the insurance policy, the fact-finder could also conclude that Lopatin's representations were false.

c. Lopatin's Knowledge of or Reckless Indifference to Statement's Falsity

Moreover, a question of fact exists regarding whether Lopatin knew that his representations regarding the life insurance policy were false or whether he made these representations in reckless indifference to their falsity. Lopatin claimed that, when the firm purchased the policy, he believed that the firm was both the owner and beneficiary of the policy. He claimed that, until he saw a copy of the bill in late 2001, he was unaware of the actual structure of the life insurance policy or that the Miller Trust was listed as the beneficiary. Yet Lopatin signed the split-dollar insurance agreement, which indicated that the firm agreed to pay the premiums on the insurance policy to compensate Miller for his continued employment and to designate the Miller Trust as the beneficiary.[9] Because evidence was presented indicating that Lopatin signed the agreement, yet made contradictory statements to defendant regarding the nature and purpose of the policy, a reasonable fact-finder could conclude that Lopatin knowingly made false representations regarding the nature and purpose of the policy.

Regardless, if a reasonable fact-finder chooses to believe Lopatin's assertions that he was unaware of the actual terms of the insurance agreement at the time of purchase, he could still reasonably conclude that Lopatin made the contested representations in reckless indifference to their falsity. "Reckless misconduct is not willful in the sense that there is actual intent to cause harm." *Echelon Homes, LLC v Carter Lumber Co*, 261 Mich App 424, 443; 683 NW2d 171 (2004), rev'd on other grounds 472 Mich 192 (2005). Instead, reckless misrepresentations are the functional equivalent of willfully made misrepresentations because they exhibit a level of indifference to whether harm will result that is equivalent to a willingness that it does. *Id.* at 443-444. The evidence presented before the trial court is sufficient to permit a reasonable fact-finder to conclude that Lopatin recklessly ignored the information stating the nature and purpose of the policy agreement found in a document he executed and then made contradictory representations in reckless indifference to their falsity.

d. Representation Made with Intent that Defendant Act

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[8] Miller also stated that he initiated the purchase of the life insurance policy to benefit his family after his death, and that he never intended for the policy proceeds to be used to purchase his interest in the firm from his estate after his death.

[9] Neither party presented evidence that Lopatin's signature on the document was forged or that he was incapable of executing the agreement when he signed the document.

Defendant claimed that Lopatin only revealed that the firm purchased the life insurance policy after defendant approached him with concerns regarding his future with the firm after Miller's acquisition of a controlling interest in the firm. Further, Lopatin acknowledged that he discussed the nature and purpose of the policy in the context of explaining to defendant the steps the firm was taking to protect defendant's standing and interest in the firm after Miller's death. Defendant's assertions regarding the context in which Lopatin discussed the insurance agreement establish a question of fact regarding whether Lopatin intended for defendant to act (and, specifically, to remain with the firm) based on these representations.

e. Defendant's Reliance on Lopatin's Statement

Although defendant need not establish that Lopatin's misrepresentation solely influenced his 1997 decision to remain with the firm, he must establish that the misrepresentation had a material influence on his decision to remain. *United States Fidelity & Guaranty Co v Black*, 412 Mich 99, 121; 313 NW2d 77 (1981). Defendant maintained that he relied on Lopatin's assurances that the policy would protect his position in the firm after Miller's death when he decided to continue working for the firm after Miller became the principal shareholder. Defendant remained with the firm for approximately five more years, and he only decided to leave the firm after learning that the Miller Trust was the designated beneficiary of the life insurance policy. This testimony establishes a question of fact regarding whether defendant relied on Lopatin's representations that the firm had purchased the policy as a way to protect defendant's interest in the firm when he chose to remain with the firm in 1997.

Defendant must also establish that his reliance on plaintiff's representations was reasonable. *Foreman v Foreman*, 266 Mich App 132, 141-142; 701 NW2d 167 (2005). Defendant admitted that he was not shown a copy of the policy at the time Lopatin made the contested representations. Yet defendant and other employees often approached Lopatin with personnel and employment concerns. Furthermore, as discussed *supra*, questions of fact exist regarding whether Lopatin had actual or apparent authority to make these representations. After considering Lopatin's role in the firm and his relationship with defendant at the time he made the contested remarks, as well as the fact that defendant never saw a copy of the policy, a reasonable fact-finder could conclude that defendant reasonably relied on Lopatin's representations regarding the insurance policy.

f. Damages

Finally, a question of fact exists regarding whether defendant was damaged by the alleged misrepresentation. Defendant asserts that he suffered damages in three ways, namely, he lost the opportunity to receive Miller's shares in the firm after his death, he continued his employment with the firm rather than start his own firm, and he received reduced profit distributions.

"In a fraud and misrepresentation action, the tortfeasor is liable for injuries resulting from his wrongful act, whether foreseeable or not, provided that the damages are the legal and natural consequences of the wrongful act and might reasonably have been anticipated." *Phinney v Perlmutter*, 222 Mich App 513, 532; 564 NW2d 532 (1997). Although questions regarding what damages might be reasonably anticipated are better left to the fact-finder, recovery is not permitted in a tort action for remote, contingent, or speculative damages. *Ensink v Mecosta Co*

Gen Hosp, 262 Mich App 518, 524; 687 NW2d 143 (2004). This Court discussed the circumstances under which a claim of damages might be considered speculative:

> A party asserting a claim has the burden of proving its damages with reasonable certainty. Although damages based on speculation or conjecture are not recoverable, damages are not speculative merely because they cannot be ascertained with mathematical precision. It is sufficient if a reasonable basis for computation exists, although the result be only approximate. Moreover, the certainty requirement is relaxed where the fact of damages has been established and the only question to be decided is the amount of damages. [*Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 108; 535 NW2d 529 (1995) (citations omitted).]

Accordingly, summary disposition is not appropriate if evidence presented to the trial court supports a finding that defendant suffered damages because of plaintiff's misrepresentation, although the amount of damages remains in question. *Ensink*, *supra* at 526.

i. Lost Opportunity to Receive Firm Shares

Defendant failed to establish that he lost the opportunity to receive Miller's interest in the firm after his death because defendant never *had* the opportunity to receive these shares in the firm. Neither defendant nor the firm were listed as beneficiaries on the insurance policy, and defendant provides no citations to the record or to other authorities indicating that he could claim that he lost the opportunity to receive Miller's stock in the firm even though he had never been named a policy beneficiary or entered an agreement under which he would receive shares of firm stock after Miller's death.

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. [*Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Therefore, defendant fails to establish that he suffered damages from his "lost opportunity" to acquire Miller's interest in the firm after his death.

ii. Continued Employment in Reliance on Misrepresentation

Defendant asserts that, in reliance on Lopatin's representation, he continued his employment with the firm rather than start his own firm. Specifically, defendant noted in his affidavit that, by remaining with the firm, he "continued to bring in valuable cases and revenues to the [firm]." Defendant also claimed that, at the time that Lopatin made the contested representations in 1997, defendant brought in more money to the firm through referrals and other work than he received as compensation. He argues that he was damaged because he could have established his own firm and retained for himself the revenue from his clients that was taken by the firm.

Although defendant presented little to no evidence to establish the *amount* of damages that he suffered, he establishes a material question of fact regarding whether he was damaged. Pursuant to the firm's compensation structure, partners received a higher salary than associates but, unlike associates, they did not automatically receive a referral fee for each case they brought to the firm. Instead, the firm distributed any profits earned in a given calendar year as bonuses. Either Lopatin or Miller decided how bonuses would be distributed among the partners, apparently with little or no input from the other partners. In so doing, Lopatin and, later, Miller controlled the distribution of firm profits, even if the firm earned these profits through the work of nonshareholder partners and from clients referred to the firm by nonshareholder partners. Therefore, if defendant brought in more revenue from referrals than he received as compensation, as he alleges, the firm would control the distribution of revenue from clients whose cases were primarily overseen by defendant and who, presumably, he would take with him if he formed his own firm. Accordingly, defendant establishes a question of fact regarding whether he was damaged when, in reliance on Lopatin's misrepresentations, he remained with the firm instead of leaving and establishing his own firm.

iii. Reduced Profit Distributions

Finally, defendant claims that he was damaged by Lopatin's misrepresentations because he received reduced profit distributions when the firm used revenue that it otherwise would have distributed to him to purchase the life insurance policy. Specifically, defendant argues that he was entitled to ten percent of firm profit distributions and that, although he knew at the time the firm purchased the policy that it used profits that otherwise would have been distributed to him and other firm partners, he considered his reduced profit distributions "a 'trade off' for the supposed *benefit* of the life insurance policy as it was represented to him."

First, a question of fact exists regarding whether defendant had an agreement with the firm entitling him to ten percent of firm profits. Defendant did not have a written employment contract with the firm. Instead, he claims that when he discussed his employment concerns and his thoughts of leaving the firm with Lopatin in 1997, Lopatin orally promised that he would receive ten percent of firm profits. Defendant also maintained that when he informed Miller of Lopatin's promise that he would receive ten percent of firm profits as compensation, Miller did not mention that the firm had not consented to this arrangement or that Lopatin lacked the authority to enact this arrangement on behalf of the firm.

Plaintiff concedes that defendant had an indefinite term oral employment arrangement with the firm. Yet he contends that this oral employment arrangement, including Lopatin's promise that defendant receive ten percent of firm profits, violates the statute of frauds and, therefore, is unenforceable. The Michigan version of the statute of frauds, MCL 566.132 *et seq*, requires contracts that cannot be completed within one year to be in writing. However, "[w]here an oral contract may be completed in less than one year, even though it is probable the contract will extend for a period of years, the statute of frauds is not violated" and the oral contract is valid. *Cowdrey v A T Transport*, 141 Mich App 617, 619-620; 367 NW2d 433 (1985). "[A]n agreement for an indefinite term of employment is generally regarded as not being within the proscription of the statute of frauds." *Phinney, supra* at 523. Accordingly, defendant's indefinite term oral employment agreement could be completed in one year and does not violate the statute of frauds.

Plaintiff also argues that because it had an at-will employment agreement with defendant, either party could alter the terms and conditions of the agreement at any time as long as the other party accepted it. By continuing to work for plaintiff after learning that the firm paid the premiums on the life insurance policy and that the Miller Trust owned the policy, defendant entered a new at-will employment agreement with plaintiff under which his right to receive a portion of the firm's profits used to purchase the policy would be nullified.

In *Farrell v Automobile Club of Michigan (On Remand)*, 187 Mich App 220; 466 NW2d 298 (1991), this Court considered the ability of an employer to modify the terms of an oral employment agreement with its employee. Pursuant to his original oral employment contract with his employer, the plaintiff was not required to meet a sales quota as a condition of employment. *Id.* at 222-223. The employer attempted to impose additional requirements on the plaintiff as a condition of his continued employment, including the requirement that he meet a particular sales quota. *Id.* at 222. This Court noted that the employer's imposition of the requirements that all its employees meet particular sales quotas constituted an offer to modify the contrary terms of its employment agreement with the plaintiff. *Id.* at 228. This Court rejected the employer's argument that "its imposition of a policy requiring adherence to minimum sales levels constituted an offer to modify any contrary express agreement alleged by plaintiff and that acceptance of this offer was manifested where plaintiff 'clearly continued employment thereafter, without protest.'" *Id.* Instead, this Court noted,

> We cannot accept this argument, however, because we conclude from our review of the record that a sufficient factual dispute existed concerning whether plaintiff's continued employment was "without protest." Moreover, we agree with plaintiff that acceptance cannot be presumed from the mere fact of continued employment; otherwise, how would such an offer ever be rejected, absent one leaving employment? Rather, to the extent defendant's policy change constituted an offer to modify contrary terms of a prior express agreement, the question whether plaintiff accepted such an offer must be determined from the acts and circumstances of the parties, including their written or spoken words or by other acts or conduct. [*Id.*]

We cannot presume, based on defendant's continued employment alone, that he waived his claim to ten percent of firm profits and accepted the firm's decision to use its profits to pay Miller's life insurance premiums. Instead, defendant claimed that he thought the policy was intended to benefit the firm, not the Miller Trust, and he left the firm soon after learning that the Miller Trust was the named policy beneficiary. Furthermore, although Miller claimed that he paid defendant a fixed amount as an annual bonus, Lopatin and Kustra maintained that, before they cut partners' salaries in late 2001, defendant's annual bonuses were approximately ten percent of firm profits. Defendant also claimed that he confirmed that every bonus check he received represented ten percent of the profits distributed. Based on the facts and circumstances surrounding defendant's decision to remain with the firm, a question of fact exists regarding whether defendant's oral employment contract was modified when defendant continued his employment after learning that plaintiff used firm profits to purchase the life insurance policy and, hence, whether defendant has a valid claim to receive a percentage of the profits used to purchase the policy.

Finally, plaintiff argues that defendant's alleged agreement with Lopatin that the firm would pay him ten percent of profits was terminated when the firm changed defendant's salary in early 2002, ceasing to pay him and then reducing his salary by half. However, the trial court dismissed defendant's claim that he was entitled to ten percent of firm profits, and defendant does not raise this issue on appeal. Defendant only argues that, because he was contractually entitled to ten percent of firm profits, he is entitled to compensation equivalent to at least ten percent of the firm profits used to purchase the life insurance policy. The profits to which defendant claims he is entitled were used by the firm to purchase the policy before plaintiff reduced defendant's salary in early 2002. Therefore, plaintiff's argument that this employment agreement was terminated in 2000 is immaterial to the disposition of this case.

2. Innocent Misrepresentation

Second, defendant claims that Lopatin's statements constitute an innocent misrepresentation of the nature and purpose of the policy. A claim of innocent misrepresentation exists "where a party detrimentally relies on a false representation in such a manner that the injury inures to the benefit of the party making the misrepresentation." *Forge v Smith*, 458 Mich 198, 211-212; 580 NW2d 876 (1998). Unlike a claim of common-law fraud, a plaintiff claiming innocent misrepresentation need not prove "a *fraudulent purpose* or an intent on the part of the defendant that the misrepresentation be acted upon by the plaintiff . . . ." *M & D, Inc*, *supra* at 28. Furthermore, it is unnecessary to prove that the person making the representation intended to deceive the other party or even had knowledge that the statements were false. *Forge*, *supra* at 212. However, to establish an innocent misrepresentation claim, defendant must establish that he and plaintiff were in privity of contract. *Id.*

As discussed *supra*, a question of fact exists regarding whether defendant detrimentally relied on Lopatin's statements regarding the life insurance policy. Further, the parties do not dispute that an oral employment contract existed between the firm and defendant at the time the alleged misrepresentations were made. In addition, a question of fact exists regarding whether Lopatin made the alleged misrepresentation in light of defendant's statements that he would leave the firm if he were not assured that his future standing in the firm was secure. Based on a finding that these assertions were true, a reasonable fact-finder could conclude that Lopatin made the alleged misrepresentation in the context of modifying the terms of its employment contract with defendant and, hence, that the parties were in privity of contract when the alleged misrepresentation occurred.

Finally, a question of fact exists regarding whether plaintiff benefited from Lopatin's misrepresentation. As discussed *supra*, a question of fact exists regarding whether defendant sacrificed revenue from his clients to the firm that he otherwise would have kept for himself when he chose to remain with the firm, and whether he was denied a percentage of the firm profits used to purchase the life insurance policy. The money that he claims he would have received but for Lopatin's misrepresentations instead went to the firm. Therefore, a question of fact exists regarding whether plaintiff benefited from Lopatin's alleged misrepresentation. Accordingly, a question of fact exists regarding whether Lopatin innocently misrepresented the terms of the life insurance policy to defendant.

3. Negligent Misrepresentation

Third, defendant claims that Lopatin's statements negligently misrepresented the nature and purpose of the policy. To establish a claim of negligent misrepresentation, defendant must establish "'that a party justifiably relied to his detriment on information prepared without reasonable care by one who owed the relying party a duty of care.'" *Mable Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 502; 686 NW2d 770 (2004), quoting *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 30; 436 NW2d 70 (1989). The question whether a person *justifiably* relies on information is indistinguishable from the question whether the person *reasonably* relies on it. *Fejedelem v Kasco*, 269 Mich App 499, 503; 711 NW2d 436 (2006). We concluded *supra* that a question of fact exists regarding whether defendant justifiably and, hence, reasonably relied on Lopatin's statements regarding the life insurance policy when he chose to remain with the firm in 1997.

Furthermore, a question of fact exists regarding whether defendant detrimentally relied on Lopatin's statements. Detrimental reliance is "[r]eliance by one party on the acts or representations of another, causing a worsening of the first party's position." Black's Law Dictionary. As discussed *supra*, defendant presented evidence establishing a question of fact regarding whether he was damaged as a result of his reliance on Lopatin's representations. This evidence also establishes a question of fact regarding whether defendant was harmed by his reliance on Lopatin's statements and, hence, whether he relied on Lopatin's statements to his detriment.

In addition, evidence presented before the trial court establishes a question of fact regarding whether Lopatin gathered and spread the contested information without taking reasonable care to ensure its accuracy. As discussed *supra*, Lopatin signed the split-dollar insurance agreement, which noted that the firm would pay the premiums on Miller's life insurance policy as a form of compensation and that the Miller Trust would be the beneficiary of the policy. However, Lopatin then gave defendant a conflicting account of the nature and purpose of the policy. Accordingly, a question of fact exists regarding whether Lopatin acted with reasonable care when he made the contested representations.

Finally, the firm owed defendant a duty to make accurate representations regarding the policy at the time that Lopatin made the contested statements. A duty of care exists if a plaintiff is under any obligation for the benefit of a defendant. *Schultz v Consumers Power Co*, 443 Mich 445, 449-450; 506 NW2d 175 (1993), quoting Prosser & Keeton, Torts (5th ed), § 53, p 356. To determine if a duty exists, we examine "a wide variety of factors, including the relationship of the parties and the foreseeability and nature of the risk." *Schultz*, *supra* at 450.

> Most importantly, for a duty to arise there must exist a sufficient relationship between the plaintiff and the defendant. As this Court stated in *Samson v Saginaw Professional Bldg, Inc*, 393 Mich 393, 406; 224 NW2d 843 (1975):
>
> > [T]o require the actor to act, some sort of relationship must exist between the actor and the other party which the law or society views as sufficiently strong to require more than mere observation of the events which unfold on the part of the defendant. It is the fact of existence of this relationship which the law usually refers to as a duty on the part of the actor.

[*Id.* (footnote omitted).]

As discussed *supra*, a question of fact exists regarding whether Lopatin was an agent of the firm when he made the representations and whether the authority imputed to him by the firm included the authority to make these representations regarding the policy. Defendant also claims that Lopatin informed him that the firm bought the life insurance policy in order to use the proceeds to purchase Miller's interest in the firm after his death, protecting defendant's standing in the firm, after defendant expressed concerns regarding his future with the firm. As discussed *supra*, a reasonable fact-finder could conclude that Lopatin was firm president and was in a position to make representations regarding employment, compensation, and personnel concerns to employees on behalf of the firm. Furthermore, Lopatin disclosed the existence of the policy to defendant in response to his concerns regarding his future with the firm and his threats to leave if he was not assured that his future with the firm would be secure. A reasonable fact-finder could conclude that a relationship existed between Lopatin and defendant in which defendant relied on Lopatin's representations regarding employment, compensation, and personnel concerns made on behalf of the firm. Further, given the context in which Lopatin disclosed the policy to defendant, it was foreseeable that defendant would rely on this representation. Accordingly, under this factual scenario, the firm would have a duty of care to make accurate and truthful representations, in response to defendant's inquiries, regarding its use of firm revenues and steps it was taking, if any, to protect defendant's interest in the firm.

Because a reasonable juror could conclude that a factual scenario exists under which the firm would have a duty of care to make truthful representations to defendant in response to his employment concerns and questions of fact exist regarding whether defendant justifiably relied to his detriment on plaintiff's representations regarding the insurance policy and whether plaintiff made the contested representations without concern for the inaccuracy of his statements, defendant presented sufficient evidence to establish a claim of negligent misrepresentation against plaintiff.

4. Silent Fraud

Finally, defendant claims that Lopatin's statements constitute silent fraud. "[A] claim of silent fraud is established when there is a suppression of material facts and there is a legal or equitable duty of disclosure." *M & D, Inc*, *supra* at 35-36. A legal duty to disclose arises when a party inquires regarding something to which the responding party replies incompletely "with answers that are truthful but omit material information." *Mable Cleary Trust*, *supra* at 500. Silent fraud is predicated on incomplete or misleading statements made in response to specific inquiries. *M & D, Inc*, *supra* at 31. The responding party commits silent fraud if it is duty-bound to make a disclosure and intentionally suppresses material facts to create a false impression to the other party. *Id.* at 25.

Defendant did not establish a question of fact regarding whether Lopatin made incomplete representations and, hence, committed silent fraud. Defendant does not assert that Lopatin failed to disclose material information to him in response to his inquiries regarding his future with the firm. Instead, he maintains that Lopatin disclosed blatantly false information to him regarding the nature and purpose of the life insurance policy. Because defendant's claim is that Lopatin made an affirmative misrepresentation, not a nondisclosure of material information, he fails to establish that Lopatin's statements constituted silent fraud.

C. Misrepresentation Claims against Miller

Defendant also alleges that Miller misrepresented the nature and purpose of the life insurance policy, yet he did not present sufficient information to establish a question of fact regarding this claim. Jamieson and Kustra claimed that both Miller and Lopatin told them that the firm purchased a policy on Miller's life and named the firm as beneficiary, although Miller denied making these representations. Yet defendant never asserted, either in his briefs on appeal or in his deposition, that Miller discussed the life insurance policy directly with him. Furthermore, defendant does not argue, and the evidence presented before the lower court does not indicate, that defendant relied, or claimed to rely, on a false representation made by *Miller* when choosing to remain with the firm. Accordingly, defendant failed to establish a question of fact regarding Miller's alleged affirmative misrepresentation of the life insurance policy. "A party may not rely on this Court to make his arguments for him." *Rorke v Savoy Energy, LP*, 260 Mich App 251, 260; 677 NW2d 45 (2003). Therefore, a party abandons a claim if it fails to adequately brief its position or to support its claim with authority. *Moses, Inc v SEMCOG*, 270 Mich App 401, 417; 716 NW2d 278 (2006). Because defendant fails to establish that Miller made a false representation on which he detrimentally relied, he fails to establish claims of actual, innocent, or negligent misrepresentation predicated on statements made by Miller. Defendant also fails to present evidence establishing that Miller committed silent fraud, because he fails to establish that he asked Miller about the life insurance policy or his future with the firm, and that Miller responded to his inquiry with a representation that was truthful, yet omitted material information regarding the policy.

D. Claims of Mental/Emotional Distress

Defendant mentions that he experienced mental distress or anguish when plaintiff misrepresented the nature and purpose of the life insurance policy. However, defendant failed to plead a cause of action for damages for mental distress or anguish in his complaint, as required by MCR 2.111(B). Because defendant failed to raise this issue in his complaint and because the trial court did not address this issue, it is not preserved for our review. *Pro-Staffers, Inc v Premier Mfg Support Services, Inc*, 252 Mich App 318, 328-329; 651 NW2d 811 (2002). Further, defendant merely argues on appeal that "damages for misrepresentation include compensation for mental distress and anguish and/or exemplary damages, especially where, as here, the representations are undisputed and especially egregious." He provides no citations to the lower court record to support his contention that he suffered mental distress or anguish. "We will not search the record for factual support for [defendant's] claims." *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 388; 689 NW2d 145 (2004). Further, defendant failed to include this issue in his statement of questions presented, as required by MCR 7.212(C)(5). For these reasons, we will not consider his argument further. *Joerger v Gordon Food Service*, 224 Mich App 167, 172; 568 NW2d 365 (1997).

III. Precomplaint Interest

Plaintiff argues that the trial court erred when it failed to award plaintiff precomplaint interest on the unpaid balance of its loan to defendant.[10] We do not agree.

"Entitlement to interest on a judgment is purely statutory and must be specifically authorized by statute. Statutes providing for interest on judgments are in derogation of the common law and therefore must be strictly construed." *Dep't of Transportation v Schultz*, 201 Mich App 605, 610; 506 NW2d 904 (1993) (citations omitted). Accordingly, the question whether plaintiff is entitled to precomplaint interest is one of law that we review de novo.

First, plaintiff alleges that defendant admitted to owing precomplaint interest on the unpaid balance of the loan in the following exchange during his deposition:

> *Q.* And when you were employed at the law firm of Lopatin Miller, did you borrow certain moneys from that law firm?
>
> *A.* Yes.
>
> *Q.* And in what amount did you borrow?
>
> *A.* I borrowed money on several occasions.
>
> *Q.* On December 31st of 2000 did you borrow?
>
> *A.* Yes.
>
> *Q.* And how much did you borrow?
>
> *A.* I think it was [$130,000] or [$]135,000.
>
> * * *
>
> *Q.* Did you say I'm not going to pay it back until it's convenient to me?
>
> *A.* I don't think there was any discussion on when it was going to be paid back.
>
> *Q.* You just borrowed some money and payable on demand?
>
> *A.* There was no discussion about that either. It was the way it was done.
>
> *Q.* Okay. Was there an interest rate that attached to that loan?
>
> *A.* I assume it will be imputed. It hadn't been in the past, but . . . .

[10] The trial court awarded plaintiff postcomplaint interest on the unpaid balance of the loan pursuant to MCL 600.6013.

Q. At what rate do you think it's imputed?

A. I have no idea.

* * *

Q. Okay. If you borrowed approximately [$130,000] and paid back approximately [$70,000] or [$75,000], you have a balance of how much, according to your calculations?

A. I paid all of it, but [$]55,000.

Q. Plus whatever interest there is[,] correct?

A. Okay.

Q. And why haven't you paid that?

A. Because my income was—I wasn't—didn't see my paychecks, and the indication from you was that there weren't going to be paychecks, and that you were going to arbitrarily cut my pay, which I indicated I wasn't going to agree to, and that I was going to use that money to offset what you would eventually owe me.

Yet these statements were not binding admissions by defendant that he agreed to pay precomplaint interest on the unpaid balance of his loan. For a statement to be binding on defendant, it must be "a distinct, formal admission solemnly made for the express purpose of dispensing with proof of a particular fact." *Ann Arbor Tenants Union v Ann Arbor YMCA*, 229 Mich App 431, 440; 581 NW2d 794 (1998). Defendant's statement that he assumed that interest would be imputed on the loan and his acknowledgement, by use of the term "okay," that he owed interest on the unpaid $55,000 balance of the loan are not "distinct, formal admissions" that he agreed to pay precomplaint interest on the unpaid balance of the loan. Not only does defendant fail to affirmatively state that he agreed to pay precomplaint interest on the loan, but the deposition testimony does not even indicate that plaintiff was referring to precomplaint interest (as opposed to statutory interest and a statutory interest rate) when questioning defendant.

Next, plaintiff argues that the trial court should have awarded it precomplaint interest on the unpaid balance of the loan as an element of damages. Yet, we conclude that the trial court did not err when it refused to award precomplaint interest as damages. Plaintiff provides no evidence indicating that defendant agreed to repay the loan by a particular date. "'[I]n the absence of an express promise, until the principal becomes due, no promise to pay interest can be implied, or be awarded as damages.'" *Amluxen v Eugene J. Stephenson, Inc*, 340 Mich 273, 276; 65 NW2d 807 (1954), quoting *Mitchell v Reolds Farms Co*, 268 Mich 301, 311, 256 NW 445 (1934). Interest may only be imputed as damages on loans that remain outstanding after the date of default. *Amluxen, supra* at 276. Because the parties did not agree that defendant would pay interest on the unpaid balance of the loan before it came due, plaintiff is not entitled to receive as damages the interest that would accrue on the unpaid balance of the loan before the principal was due.

Further, the parties do not indicate that the loan had a fixed payment schedule. A loan made with no fixed time of payment is payable on demand. *Colburn v First Baptist Church & Society of Monroe*, 60 Mich 198, 200; 26 NW 878 (1886). Interest does not run on a note payable on demand until payment is demanded. *Webber v Webber*, 146 Mich 31, 35; 109 NW 50 (1906), citing *In re Estate of King*, 94 Mich 411, 424-425; 54 NW 178 (1892). When no "demand" to pay a loan is made before the filing of a complaint, the filing of the complaint is considered the "demand." *Brion v Kennedy*, 47 Mich 499, 499-500; 11 NW 288 (1882). Because the parties provide no evidence that plaintiff "demanded" payment before the day it filed the complaint, we conclude that plaintiff "demanded" payment when it filed its complaint in February 2003, and the interest due on the note only began to accrue at this time. Accordingly, plaintiff is not entitled to receive precomplaint interest as an award of damages.

Plaintiff merely claims that defendant should have repaid the loan in January 2001 because defendant had established a "custom and practice" of borrowing money from the firm every December to pay his taxes and repaying the loan the following January. He argues that because "any delay of repayment beyond one month was inconsistent with the custom that gave rise to the loan to the Defendant," it should recover as damages the interest accruing on the unpaid balance of the loan between the time defendant should have repaid the loan in January 2001 and the time it filed its complaint in February 2003.

Yet plaintiff provides no citations to authority in support of its "custom and practice" argument. In particular, plaintiff provides no authority supporting its assertion that it can present testimony that defendant engaged in a "custom and practice" of paying back his annual December loans the following January to establish that one month was a "reasonable time" to pay off the December 2000 loan.

> It is well-settled that "[a] party may not leave it to this Court to search for authority to sustain or reject its position." Argument must be supported by citation of appropriate authority. An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue. [*Thompson v Thompson*, 261 Mich App 353, 356; 683 NW2d 250 (2004) (citations omitted).]

Accordingly, plaintiff abandons this argument. We hold that the trial court did not err when it refused to award plaintiff precomplaint interest on the unpaid balance of defendant's loan. Because the trial court did not err when it refused to award plaintiff precomplaint interest, we need not address plaintiff's argument that precomplaint interest should be calculated at a rate of five percent.

IV. Joint Pretrial Order

Defendant argues that the trial court abused its discretion when it admitted plaintiff's proposed joint pretrial order. First, defendant claims that the order improperly reinstated plaintiff's dismissed claim for precomplaint interest. However, defendant's claim of error is immaterial because plaintiff is not entitled to precomplaint interest for the reasons discussed *supra*. "A ruling by this Court binds the trial court on remand, pursuant to the law of the case doctrine." *Sumner v Gen Motors Corp (On Remand)*, 245 Mich App 653, 661; 633 NW2d 1 (2001). Accordingly, the trial court "may not take any action on remand that is inconsistent with the judgment of the appellate court." *Kalamazoo v Dep't of Corrections (After Remand)*, 229

Mich App 132, 135; 580 NW2d 475 (1998). Because the trial court will be bound on remand by our holding that plaintiff is not entitled to precomplaint interest, defendant's assertion of error is moot.

Next, defendant alleges that the joint pretrial order mischaracterized his claims, yet he fails to describe the nature of this alleged mischaracterization, explain any harm he might suffer as a result of this mischaracterization, or provide any authority in support of his argument. Defendant also alleges that the trial court was aware that plaintiff refused to cooperate in drafting the joint pretrial order. However, he fails to identify any harm he suffered as a result of this alleged lack of cooperation or to provide authority in support of his claim of error. *Mitcham, supra* at 203. Defendant abandons these arguments on appeal, and we will not address them further. *Moses, Inc, supra* at 417.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens